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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,471	02/21/2001	Koji Sasaki	1506.1004	6200
21171	7590	02/24/2005	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			RUTTEN, JAMES D	
			ART UNIT	PAPER NUMBER
			2122	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/788,471	Applicant(s) SASAKI, KOJI	
	Examiner J. Derek Rutten	Art Unit 2122	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C § 112, second paragraph.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-17.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

Continuation of 13. Other:

Applicant's amendments place the claims in a better form for appeal, but do not make the claims allowable. Claims 1-17 remain rejected as applied in the Final action dated 9/23/04.

It is noted that claim 1 as submitted on 12/23/2004 is identical to claim 1 submitted 7/9/2004. However, claim 1 submitted on 12/23/2004 is listed as "Currently Amended", which is an error. This claim should likely have been listed as "Previously Presented". Clarification is needed.


Further, applicant's arguments are not convincing. Applicant essentially states four issues:

1) Applicant argues that the prior art does not teach or suggest disposing a comment statement at all positions in a source code where a comment statement can be disposed (page 11, paragraph 1). As cited in the Final action dated 9/23/04, the "Admission of prior art" section (hereinafter "APA") of the specification, starting on page 1 and ending on page 4, discloses extraction of comment statements to form a program specification, editing the specification, and updating the source code with the edited specification. The APA section also teaches that this can only be accomplished with comment statements existing just before an aggregate. The APA section cites the inability of the disclosed editors to recognize the position in the aggregate at which the intra-aggregate comment statement should be disposed (page 3, lines 5-15). The APA section further teaches that comments can be disposed at any position where comments can be disposed (page 3 lines 16-20). As such, it would be obvious to dispose a comment statement at all positions in a source code where a comment statement can be disposed. Furthermore, comment statements are featured in most popular programming languages such as C, C++, Java, etc., and allow a programmer to document the source code without interfering with the logical execution of the program. It is an inherent feature of comment statements that they can be disposed of "at all positions in a source code where a comment statement can be disposed." It is obvious on its face that they can appear wherever they can appear. Thus applicant's argument is not convincing.

2) Applicant argues that "the cited portion" (APA) does not teach or suggest use of a "unique comment keyword" for updating the source code (page 11, paragraphs 2 and 3). It is agreed that APA does not teach a unique comment keyword. However, APA was not relied upon for this feature. Rather, see the Delucia reference, column 2 lines 19-22 for discussion of a "unique block identifier", as applied in the Final Action dated 9/23/2004. Thus the argument is moot.

3) Applicant argues that the Delucia reference fails to teach a "unique comment keyword," and that Delucia's "unique block identifier" is not analogous (page 11, last paragraph). However, Delucia teaches using the unique block identifiers in comment statements to produce a program specification (column 2 lines 48-51). This unique block identifier is used to relate a section of source code to the specification regardless of the line number where it appears in the source code. Delucia's unique block identifier thus teaches the use of, and is analogous to, unique comment keywords for relating a specification to source code.

4) Applicant argues that the Naota reference fails to teach or suggest editing the comment statements through an input device (page 12 paragraph 3). It is noted that none of claims 3, 7, or 11 recite the limitation "input device". Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).


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